

**Shea, Valois**

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**From:** Ex. 6 Personal Privacy (PP)  
**Sent:** Friday, May 19, 2017 6:10 PM  
**To:** Shea, Valois  
**Cc:** Miller, Travis  
**Subject:** Comments Re: Dewey Burdock Uranium Mine  
**Attachments:** NRS\_ Comments for Dewey Burdock ISL Uranium Mine.pdf

Ms. Shea,

Please find comments attached regarding the Dewey Burdock Uranium Mine in the Black Hills. We strongly urge you to deny the requested permits and the aquifer exemption.

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Thank you,

Ex. 6 Personal Privacy (PP)

Native Research Solutions

May 19, 2017

Valois Shea  
U.S. EPA Region 8  
Mail Code: 8WP-SUI  
1595 Wynkoop Street  
Denver, Colorado 80202-1129

**RE: Comments for Dewey-Burdock Class III and Class V UIC Permits and Aquifer Exemption**

Dear Ms. Shea:

Please accept these comments on behalf of Native Research Solutions (NRS). Native Research Solutions (NRS) is an Indigenous-led organization that provides legal research to grassroots communities working on social justice and human rights issues. NRS specializes in Federal Indian Law, Environmental Law and Water Law. NRS is dedicated to supporting and working with communities impacted by natural resource exploitation, racial discrimination, and other social injustices. NRS works with communities to protect the health and livelihood of the people, the environment, sacred sites, and water resources. NRS works with tribal governments and organizations to assert tribal sovereignty and fulfill tribal self-determination. NRS stands in solidarity with the Lakota Nation and other tribes in enforcing treaty rights and protecting sacred sites.

Currently, the EPA does not have all the necessary data to make a thoughtful, well-planned decision on these permits. The impacts of past drilling and improperly plugged boreholes and how ISL mining will further impact these boreholes is largely unknown. Cultural data, including archaeological and burial sites, need to be inventoried in order to ensure sites are protected. Making a decision on the permits and exemption now without the necessary data is unwise and premature. Proceeding with the permits before all the information is available denies the public a meaningful opportunity to participate and be heard.

Every other UIC mine in the country is governed by an individual state regulatory scheme. This is the first time EPA is directly permitting and regulating a UIC mine. EPA has neither the specific regulations nor the expertise to permit the UIC mine. In this instance, the EPA should tread especially carefully and create a thorough process in order to best protect the environment and communities EPA serves.

NRS joins the tribes, the local communities, farmers and ranchers, and environmental and social justice organizations in asking the EPA to deny the UIC permits and deny the requested aquifer exemption. Given the recent history and the events that occurred in Standing Rock regarding the Dakota Access Pipeline, it is incumbent on the EPA to adhere to the most open and inclusive process, providing the public with all information necessary to provide a meaningful opportunity to be involved in matters most intimately impacting our lives.

## **I. The Class III and Class V UIC Permits Should Be Denied Because Contamination from ISL Mining Operations is Certain and Irreversible.**

While touted by the uranium industry as “advanced”<sup>1</sup> technology, ISL mining has been used in the U.S. and around the world since the 1960s.<sup>2</sup> The process of ISL mobilizes uranium that would otherwise be locked in place and releases it into the groundwater. Through this process, the ISL method purposefully contaminates groundwater by mobilizing uranium into the groundwater that would otherwise have been held captive in the bedrock.<sup>3</sup> Meanwhile, contamination from the mines and impacts on the underlying aquifers would last long after the Dewey-Burdock mining operations ended.

Communities in the area are concerned that impacts to their groundwater source may be irreversible, as has been the case in other places that have experienced ISL mining. Texas has the greatest number of *in-situ leach* uranium mines in the U.S.<sup>4</sup> Uranium Resources, Inc. owns the Kingsville Dome uranium mine in Texas where contamination from an ISL mine has spread throughout the aquifer to nearby drinking wells.<sup>5</sup> According to a USGS study that studied the effectiveness of groundwater restoration at ISL sites in Texas, more than half of the uranium production areas surveyed had higher levels of uranium in groundwater after mining and reclamation, than before mining began.<sup>6</sup> Equally important, all of the studied sites had received “amended restoration goals for at least one element after operators have expended a reasonable degree of effort to restore groundwater.”<sup>7</sup> Amended restoration goals occur when a party is unable to restore the groundwater to the previously agreed-upon water standards. The experience in Texas confirms community concerns that restoring groundwater to a usable condition after mining is unlikely.

The NRC itself has conceded that restoring an aquifer to a pre-mining condition after ISL mining has ended is “virtually impossible”.<sup>8</sup> The EPA has also stated, “Based on EPA’s experience with other in-situ mining projects, EPA believes there is a high likelihood that, following mining activities, residual waste from mining activities will not remain in the

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<sup>1</sup> D.W. McCARN, INNOVATIVE PROJECTS INTERNATIONAL, THE CROWNPOINT AND CHURCHROCK URANIUM DEPOSITS, SAN JUAN BASIN, NEW MEXICO: AN ISL MINING PERSPECTIVE 171 (2001).

<sup>2</sup> WORLD INFORMATION SERVICE ON ENERGY URANIUM PROJECT, <http://www.wise-uranium.org/uisl.html> (last visited Oct. 25, 2016).

<sup>3</sup> RADIATION PROTECTION DIVISION, US ENVIRONMENTAL PROTECTION AGENCY, CONSIDERATIONS RELATED TO POST CLOSURE MONITORING OF URANIUM IN-SITU RECOVERY SITES 18 (2014).

<sup>4</sup> SUSAN HALL, GROUNDWATER RESTORATION AT URANIUM IN-SITU RECOVERY MINES 1 (U.S. Geological Survey ed., 2009).

<sup>5</sup> George Rice, *Excursions of Mining Solution at the Kingsville Dome In-Situ Leach Uranium Mine*, 9 AUSTIN GEOLOGICAL SOCIETY BULLETIN, 2012-2013 at 18.

<sup>6</sup> *Id.* at 30.

<sup>7</sup> SUSAN HALL, GROUNDWATER RESTORATION AT URANIUM IN-SITU RECOVERY MINES 9 (U.S. Geological Survey ed., 2009).

<sup>8</sup> Bill von Till, NRC Regional Licensing Branch Chief, NRC Regulatory Commission meeting. Dan Kelley, *As Uranium Mines Closed, State Altered Cleanup Goals*, CORPUS-CHRISTI CALLER-TIMES, Nov. 4, 2006, <http://archive.caller.com/news/as-uranium-mines-closed-state-altered-cleanup-goals-ep-365758114-317145331.html>.

[http://www.i2massociates.com/Downloads/Kelley\\_story\\_ISL\\_restoration.pdf](http://www.i2massociates.com/Downloads/Kelley_story_ISL_restoration.pdf)

exempted area” and waste will travel throughout the aquifer.<sup>9</sup> These statements confirm community fears that certain and irreversible contamination will occur in the overlying and underlying aquifers which residents rely on.

The proposed mine and deep disposal wells are in an area that is documented to have faults, fractures, breccia pipes, and over 7,000 old boreholes that have not been properly plugged.<sup>10</sup> It will be impossible to contain mining fluids or waste liquids, and contamination of groundwater resources is certain. The problems of leaks and spills and contamination of water resources begin even before the mines close.

To Indigenous peoples, contamination of water also raises cultural concerns. To Indigenous peoples, water, in particular, holds special meaning and is regarded as a sacred element. Indigenous cultures all over the world recognize a simple predicate: water is life. Water is identified as the first medicine. It is the first environment in which we live while we are being carried in our mothers. It is an offering made in prayer ceremonies and is a spiritual being in and of itself. All of these factors should be considering in evaluating the requested permits.

## **II. The Proposed Aquifer Exemption Should Be Denied Because it is Inconsistent with the Purpose and Intent of the Safe Drinking Water Act.**

The Safe Drinking Water Act (SDWA) was passed in 1974 and amended in 1996.<sup>11</sup> The purpose of the SDWA is to assure that drinking water sources meet minimum national standards for the protection of public health “to the maximum extent feasible.”<sup>12</sup> The SDWA accomplishes its purpose of protecting drinking water supplies throughout the nation by setting national health-based standards for drinking water, creating barriers against pollution, providing grants to states to implement state drinking water programs, and by disseminating information to the public about water systems in their area and where their water comes from.<sup>13</sup> Standards for drinking water set “enforceable maximum contaminant levels for particular contaminants in drinking water.”<sup>14</sup> Barriers against contamination include source water protection, treatment, distribution system integrity, and public information.<sup>15</sup>

It was Congress’s intent that the SDWA be “liberally construed so as to effectuate the preventative and public health protective purposes of the bill.”<sup>16</sup> Congress sought to protect not only currently-used sources of drinking water, “but also potential drinking water sources for the future.”<sup>17</sup> Congress noted that contamination of potential drinking water sources should “not be

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<sup>9</sup> Letter from William Honker, Acting Director, Water Quality Protection Division, US EPA to Zak Covar, Exec. Dir., Texas Comm’n on Env’tl. Quality (May 16, 2012) (on file with author).

<sup>10</sup> EARTHWORKS, [http://org.salsalabs.com/o/676/p/dia/action4/common/public/?action\\_KEY=21716&tag=mining](http://org.salsalabs.com/o/676/p/dia/action4/common/public/?action_KEY=21716&tag=mining) (last visited May 19, 2017).

<sup>11</sup> MARY TIEMANN, SAFE DRINKING WATER ACT: A SUMMARY OF THE ACT AND ITS MAJOR REQUIREMENTS, 1 (Congressional Research Specialists 2014).

<sup>12</sup> H.R. REP. NO. 93-1185, at 6455 (1974).

<sup>13</sup> U.S. ENVIRONMENTAL PROTECTION AGENCY, UNDERSTANDING THE SAFE DRINKING WATER ACT (U.S. EPA 2004).

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> *Id.* at 6484.

<sup>17</sup> *Id.*

permitted if there is any *reasonable likelihood that these sources will be needed in the future* to meet the public demand for drinking water and if these sources may be used for such purposes in the future.”<sup>18</sup>

The SDWA creates the framework for the Underground Injection Control (UIC) program. The SDWA directs EPA to establish minimum requirements for control of underground injection processes in order to protect sources of drinking water.<sup>19</sup> The UIC program governs the ISL process.

An aquifer exemption allows mining activity to occur in groundwater that would otherwise be protected as a drinking water source. EPA promulgated rules for exempting aquifers from the SDWA in 1980.<sup>20</sup> The EPA allowed for the creation of aquifer exemptions so as not to severely limit certain types of energy production, such as ISL mining.<sup>21</sup> The EPA Administrator was given the authority to exempt certain underground sources of drinking water when those sources have “no real potential to be used as drinking water sources.”<sup>22</sup> As of 2014, more than 4,000 exemption permits have been approved by EPA throughout the country.<sup>23</sup>

An aquifer meets the criteria for exemption if:

(a) It does not currently serve as a source of drinking water; and (b) it cannot now and will not in the future serve as a source of drinking water because: (1) it is mineral, hydrocarbon or geothermal energy producing, or can be demonstrated by a permit applicant as part of a permit application for a Class II or III operation to contain minerals or hydrocarbons that considering their quantity and location are expected to be commercially producible; (2) It is situated at a depth or location which makes recovery of water for drinking water purposes economically or technologically impractical; (3) It is so contaminated that it would be economically or technologically impractical to render that water fit for human consumption; or (4) It is located over a Class III well mining area subject to subsidence or catastrophic collapse; or (c) The total dissolved solids content of the ground water is more than 3,000 and less than 10,000 mg/l and it is not reasonably expected to supply a public water system.<sup>24</sup>

In this case, Powertech is requesting the aquifer exemption under (a) and (b)(1). Subsection (a), requiring current use of an aquifer is clearly inconsistent with Congress’s intent that aquifers be protected if it is reasonable they could be used in the future. Subsection (b)(1) is

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<sup>18</sup> *Id.* (emphasis added)

<sup>19</sup> 42 U.S.C. § 300h (2005).

<sup>20</sup> U.S. ENVIRONMENTAL PROTECTION AGENCY, [https://www.epa.gov/uic/aquifer-exemptions-underground-injection-control-program#role\\_respon](https://www.epa.gov/uic/aquifer-exemptions-underground-injection-control-program#role_respon) (last visited Oct. 26, 2016).

<sup>21</sup> Memorandum from Peter Grevatt, Director, Office of Ground Water and Drinking Water to Water Division Directors Regions I-X (July 24, 2014) (on file with author).

<sup>22</sup> 40 CFR 144.7. Consolidated Permit Regulations, 45 Fed. Reg. 33, 290 (May 19, 1980).

<sup>23</sup> Memorandum from Peter Grevatt, Director, Office of Ground Water and Drinking Water to Water Division Directors Regions I-X (July 24, 2014) (on file with author).

<sup>24</sup> *Id.* at § 146.4.

similarly inconsistent with Congress's intent that water sources be protected, regardless of whether there are economically valuable minerals in the aquifer.

### **III. The Federal Government Has a Legally-Recognized Federal Trust Responsibility to Protect Native American Sacred Sites.**

While the necessary cultural data still needs to be collected and analyzed and the granting of the mine permits is premature without this cultural data, one thing is certain- the federal government has a trust responsibility to protect Native American sacred sites. The National Historic Preservation Act, the Native American Graves Protection and Repatriation Act, the Religious Freedom Restoration Act, and Executive Order No. 13007 all offer protections for Native American sacred sites and weigh in favor of denying the permits.

The federal government and Indian tribes have a unique legal relationship, known as the trust relationship, in which the federal government has legal obligations and duties to Indian tribes.<sup>25</sup> This trust relationship requires the federal government to protect the property and resources of Indian tribes, including rights to water and protection of sacred sites.<sup>26</sup> Here, there is no doubt that the proposed mining project would impact Indian people and communities.

EPA itself has taken a broad view of the role of tribal governments in policy decision-making. In the EPA Policy for the Administration of Environmental Programs on Indian Reservations, the EPA states, "the Agency will view tribal governments as the appropriate non-federal parties for making decisions and carrying out program responsibilities affecting Indian reservations, their environments, and the health and welfare of the reservation populace."<sup>27</sup> In addition, EPA states it will "look directly to Tribal Governments to play this lead role for matters affecting reservation environments."<sup>28</sup> Here, the proposed permits significantly impact tribal communities and resources. EPA should adhere to its own policy and follow the lead of the tribe. The tribe has been clear in its position and its opposition to uranium mining in the sacred Black Hills.

The Black Hills, known as *Paha Sapa* to the Lakota, are the center of their spiritual and cultural universe. To the Lakota, throughout all of Creation, *Paha Sapa* has been "The Heart of Everything That Is." Lakota medicine man Pete Catches, describes the relationship between *Papa Sapa* and the Lakota:

To the Indian spiritual way of life, the Black Hills is the center of the Lakota people. There ages ago, before Columbus came over the sea, seven spirits came to the Black Hills. They selected that area, the beginning of sacredness to the Lakota people . . . The seventh spirit brought the Black Hills as a whole--brought it to the Lakota

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<sup>25</sup> See Felix S. Cohen, Handbook of Federal Indian Law § 5.04[4][a] at 418-422 (2005).

<sup>26</sup> *Id.*

<sup>27</sup> Environmental Protection Agency, *EPA Policy for the Administration of Environmental Programs on Indian Reservations (1984 Indian Policy)*, <https://www.epa.gov/sites/production/files/2015-04/documents/indian-policy-84.pdf>.

<sup>28</sup> *Id.*

forever, for all eternity, not only in this life, but in the life hereafter. The two are tied together. Our people that have passed on, their spirits are contained in the Black Hills. This is why it is the center of the universe, and this is why it is sacred to the Oglala Sioux. In this life and the life hereafter, the two are together.”<sup>29</sup>

Many sites are sacred because it is a location where an event of great spiritual significance occurred. The late Native American scholar Vine Deloria, Jr. writes, “Tradition tells us that there are, on this earth, some places of inherent sacredness, sites that are Holy in and of themselves.”<sup>30</sup> Vine Deloria, Jr. writes, “Every society needs these kinds of sacred places. They help to instill a sense of social cohesion in the people and remind them of the passage of the generations that have brought them to the present. A society that cannot remember its past and does not honor it is in peril of losing its soul.”<sup>31</sup>

The EPA should deny the permits because environmental justice policy requires nothing less. The EPA should deny these permits in order to restore relationships with tribal communities and in recognition of the long history of environmental racism towards Native American communities as they have endured the burdens of energy production for this country.

The EPA defines “environmental justice” as “the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.” Here, fair treatment and meaningful involvement of Indian tribes requires doing more. Instead of proceeding through the process with the end goal being approving the permits in the most hasty, least expensive manner possible, consider the long-term impacts from these mines. Consider at what cost these mines are approved- destruction of historic sites, the unburying of Native American gravesites, desecration of sacred sites, lost water resources, and a continued policy of treating Indian communities as expendable populations.

The EPA needs to visit tribal reservations, view the conditions, learn the history, and listen to Indian communities most impacted. Simply consulting the tribes, receiving comments without truly considering the alternative of denying the mine permits, is nothing more than going through the motions and checking off a box. The trust responsibility places additional duties on the federal government to protect places of prayer relied on by Indian communities.

#### **IV. The Treaty Rights of the Lakota People Under the 1868 Fort Laramie Treaty Should Be Recognized and Honored.**

The Lakota have exclusive treaty rights to the Black Hills and have never waived those rights. After the Lakota were successful in defending their lands from white settlers and their victory over the U.S. military in the Powder River War of 1866-1867, the United States government sought to end the conflict in the region and initiated treaty negotiations, resulting in the 1868 Fort Laramie Treaty. The Lakota agreed to withdraw their opposition to the

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<sup>29</sup> National Park Service, 294, <https://www.nps.gov/wica/learn/historyculture/upload/-9B-9-Chapter-Nine-Nature-and-Cosmos-Pp-282-304.pdf>.

<sup>30</sup> Vine Deloria, Jr. *THE SACRED LAND READER* 18 (2003) <https://www.sacredland.org/PDFs/SLReader.pdf>.

<sup>31</sup> *Id.* at 19.

construction of railroads, to not attack settlers, and to withdraw their opposition to military posts in exchange for absolute rights to the land as well as hunting grounds outside the reservation.<sup>32</sup>

The United States pledged that the Great Sioux Reservation and the Black Hills would be “set apart for the absolute and undisturbed use and occupation of the Indians.”<sup>33</sup> The U.S. agreed that no unauthorized persons “shall ever be permitted to pass over, settle upon, or reside in [the] territory.”<sup>34</sup> However, after gold was discovered in the area, the U.S. government, under the direction of President Grant, failed to uphold their treaty obligations and allowed miners and non-Indians to invade lands set aside exclusively for the Lakota.<sup>35</sup>

After the U.S. government breached its treaty obligations by allowing miners onto land expressly reserved for the Lakota, the U.S. Supreme Court found the government guilty of an unconstitutional taking of the Black Hills from the Lakota.<sup>36</sup> In 1876, the government withheld food rations from the Lakota in an attempt to starve them into signing an agreement giving away the Black Hills.<sup>37</sup> The Lakota refused.

Article XII of the Treaty provided “No treaty for the cession of any portion or part of the reservation herein described which may be held in common shall be of any validity or force as against the said Indians, unless executed and signed by at least three-fourths of all the adult male Indians.”<sup>38</sup> Even in the face of starvation, the U.S. government was only able to secure signatures from 10% of the adult male population, far fewer than the three-fourths of adult male signatures legally required by the Treaty.<sup>39</sup> As such, the Lakota never consented and never agreed to give their rights to the Black Hills away.

The Lakota retain their treaty rights to the Black Hills and their opposition to uranium mining in the Black Hills should be recognized and adhered to. Without following the direction of the tribe, the United States continues an unconstitutional taking and carries on a legacy of disrespect and dishonorable dealings with Indian tribes.

## **V. Rates of Violence Towards Native American Women Increase in Mining Towns and the EPA Has an Obligation to Consider These Impacts and Deny the Mine Permits.**

The EPA should deny the mine permits due to the social dangers that accompany mine projects, particularly the impacts to Native American women. When a mine operation opens, transient workers move in for employment, primarily male workers, often skewing the male-female ratio in the community. This has led to an increase in more women working in strip clubs and bars. This new sex industry has brought unwanted problems to once-smaller communities. Crimes against women, particularly domestic violence and sexual assaults, rise as the population

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<sup>32</sup> United States v. Sioux Nation of Indians, 448 U.S. 371, 376 (1980).

<sup>33</sup> *Id.* at 374.

<sup>34</sup> *Id.*

<sup>35</sup> *Id.* at 378.

<sup>36</sup> *Id.* at 384.

<sup>37</sup> *Id.* at 379.

<sup>38</sup> *Id.* at 376.

<sup>39</sup> *Id.* at 382.



of mine workers grows.<sup>40</sup> In North Dakota, the oil boom resulted in a 162% increase in the violent crime rate from 2002 to 2012.<sup>41</sup> On the Fort Berthold Reservation, sexual assaults have increased by 75%.<sup>42</sup> Sexual violence against Native American women is extremely high as 1 in 3 Native women has been raped or experienced an attempted rape.<sup>43</sup>

Bringing in transient mine workers only exacerbates these problems. Sex trafficking among young Native people has also increased in communities after mine operations begin.<sup>44</sup> The EPA has a responsibility to study and evaluate increased rates of violence towards Native American women as a result of mining booms, and other secondary impacts to vulnerable populations.

## **VI. EPA Should Recognize and Follow United Nations Human Rights Principles and Deny the Permits.**

The EPA should look to principles of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) when working with Native American communities. The UNDRIP requires that state and federal governments, in good faith, receive “free, prior, and informed consent” from tribal nations on any project affecting their lands, territories, or resources.<sup>45</sup> Clearly, the Lakota have not given consent to mine uranium in the Black Hills. UNDRIP recognizes that “respect for indigenous knowledge, cultures, and traditional practices contributes to sustainable and equitable development and proper management of the environment.”<sup>46</sup>

Indigenous peoples throughout the world believe in principles of natural law as opposed to western concepts of law. Whereas western law prohibits the mix of church and religion with law, Indigenous peoples rely on cultural and religious teachings as the ultimate source of law. Natural law is a set of laws that originates from the earth and recognizes all living beings as equal. It is the belief that all beings in creation are connected and that there are familial relationships among all of creation. Natural law recognizes the role of a human as a steward of the land, to look after the land, and protect the land for future generations rather than using the earth and its resources for temporary gain. It is a concept that recognizes that the lives of human beings may end, but the world will regenerate and continue on without humans.<sup>47</sup>

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<sup>40</sup> Nikke Alex, *Dark Side of Development: Bakken Oil Boom Pumping Sexual Violence into Fort Berthold Reservation*, MISS NIKKE <http://missnikke.com/post/108614556446/dark-side-of-development-bakken-oil-boom-pumping>.

<sup>41</sup> *Id.*

<sup>42</sup> *Id.*

<sup>43</sup> *Id.*

<sup>44</sup> Rachel Knight, *Trafficking of Native Women Begins in Fracking Towns After Influx of Oil Workers*, FATAL SINCERITY (April 9, 2013) <https://fatalsincerity.com/2013/04/09/trafficking-of-native-women-begins-in-fracking-towns-after-influx-of-oil-workers>.

<sup>45</sup> UN Declaration on the Rights of Indigenous Peoples, art. 32, G.A. Res. 61/295, U.N. Doc. A/RES/61/295 (Sept. 13, 2007).

<sup>46</sup> *Id.*

<sup>47</sup> Oren Lyons, Faithkeeper of the Turtle Clan, Onondaga Council of Chiefs, Six Nations Iroquois Confederacy, YOUTUBE, <https://www.youtube.com/watch?v=q3t12TZw-nA> (last visited April 1, 2017).

Natural law is based on principles of respect and responsibility. These principles are reflected in the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP). Article 25 of the Declaration states, “Indigenous peoples have the right to maintain and strengthen their distinctive spiritual relationship with their traditionally-owned or otherwise occupied and used lands, territories, waters and coastal seas and other resources and to uphold their responsibilities to future generations in this regard.”<sup>48</sup> To grant the proposed permits to Powertech, the EPA violates this internationally-recognized human right.

In early 2017, United Nations Special Rapporteur on the Rights of Indigenous Peoples, Victoria Tauli-Corpuz visited Indigenous communities throughout the US. Ms. Tauli-Corpuz summarized her findings, recommending that a full environmental impact statement be done in every case where an extractive industry project affects Indian tribes.

In addition, the UN Special Rapporteur noted the challenges that exist in the consultation process between tribal governments and the US government. The Special Rapporteur mentioned Executive Order 13175 as a well-intentioned but confusing and disjointed framework that “suffers from loopholes, ambiguity, and a general lack of accountability.”<sup>49</sup> The Special Rapporteur went on to write, “The breakdown of communication and lack of good faith involvement in the review of federal projects has left tribal governments functionally unable to participate in consequential dialogue with the United States on projects affecting their lands, territories, and resources.”<sup>50</sup>

As a signatory to the UN Declaration on the Rights of Indigenous Peoples, the United States has an obligation to meet its human rights obligations and provide for fair and meaningful engagement of tribal governments. The UN Special Rapporteur reminds US agencies:

The goal of tribal consultation is not simply to check a box, or to merely give tribes a chance to be heard. Rather, the core objective is to provide federal decision makers with context, information, and perspectives needed to support informed decisions that actually protect tribal interests. Treaty rights, the federal trust responsibility to tribes, environmental justice, and the principles enshrined in the Declaration all must be given life and meaning in federal decisions that impact tribes.<sup>51</sup>

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<sup>48</sup> UN Declaration on the Rights of Indigenous Peoples, art. 25, G.A. Res. 61/295, U.N. Doc. A/RES/61/295 (Sept. 13, 2007).

<sup>49</sup> Victoria Tauli-Corpuz, End of Mission Statement by the United Nations Special Rapporteur on the Rights of Indigenous Peoples (March 3, 2017), available at <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21274&LangID=E#sthash.EgERyIVE.g1rWKRsr.dpuf>.

<sup>50</sup> *Id.*

<sup>51</sup> *Id.*

The EPA should fulfill its human rights responsibilities under the UN Declaration on the Rights of Indigenous Peoples and deny the mine permits.

Thank you for your consideration of these comments.

Sincerely,

## **Ex. 6 Personal Privacy (PP)**

Native Research Solutions  
6920 Porlamar Rd NW  
Albuquerque NM 87120